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# THE FORT ST. GEORGE GAZETTE

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 6] MADRAS, FRIDAY, MARCH 15, 1940

### REVENUE DEPARTMENT.

## DRAFT AMENDMENTS TO THE MADRAS TOBACCO (TAXATION OF SALES AND LICENSING) RULES, 1939.

*Fort St. George, March 15, 1940.*

**No. 155.**

The following draft of certain amendments to the Madras Tobacco (Taxation of Sales and Licensing) Rules, 1939, which it is proposed to make in exercise of the powers conferred by section 32 of the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939 (Madras Act VIII of 1939), is hereby published as required by sub-section (3) of the said section for general information.

Notice is hereby given that the draft will be taken into consideration after the expiry of one month from the date of publication of this notification and that any objection or suggestion which may be received with respect thereto before the expiry of the period aforesaid will be considered by the Government of Madras.

DRAFT AMENDMENTS.

In the said rules—

(1) In rule 4

(i) in sub-rule (1), for the expression "Forms A-1 to A-5," the expression "Forms A-1 to A-5-A" shall be substituted; and

(ii) the proviso to sub-rule (2) shall be omitted.

(2) After rule 5, the following rule shall be inserted, namely:—

"5-A. Every application for a licence as a retail dealer shall, in cases where the estimated turnover does not exceed Rs. 400 per annum, be accompanied by a receipt from an officer in charge of a Government treasury or from the bill collector of the Commercial Tax Department or from the village headman for the amount of the tax payable on his estimated turnover for the half year."

(3) In rule 6, for the expression "Forms B-1 to B-5," the expression "Forms B-1 to B-5-A" shall be substituted

(4) Sub-rule (2) of rule 7 shall be omitted and sub-rule (1) of that rule shall be renumbered as rule 7.

(5) In rule 7 as renumbered, for the expression "Form B-4 or Form B-5," the expression "Form B-4, Form B-4-A, Form B-5 or Form B-5-A" shall be substituted.

(6) For rule 8, the following rule shall be substituted, namely,—

"8. Every licence granted or renewed under these rules to a retail dealer whose estimated turnover does not exceed Rs. 400 per annum shall be for the half-year and shall expire on the 30th day of September or 31st day of March as the case may be. All other licences granted or renewed under these rules shall be for the year and shall expire on the 31st day of March."

(7) In rule 11, after the word "year," the words "or the half-year as the case may be" shall be inserted

(8) In rule 17, for the penultimate sentence the following sentences shall be substituted, namely:—

"The tax so determined shall, in the case of retail dealers whose estimated annual turnover does not exceed Rs. 400, be payable half-yearly in advance in the case of all other licensees, one-twelfth of the tax so determined shall be payable for each month of the year of assessment on or before the 10th day of the succeeding month."

(9) In Form A-4 in the heading and in paragraph 1, for the expression "broker or commission agent" the expression "broker / commission agent" shall be substituted.

(10) In the heading of Form A-5, the following shall be added at the end, namely:—

"in cases where the estimated annual turnover exceeds Rs. 400"

(11) After Form A-5, the following Form shall be inserted, namely:—

"FORM A-5-A.

*Application for licence as a retail dealer in tobacco under section 3 of the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, in cases where the estimated annual turnover does not exceed Rs. 400.*

(*See* Rule 4.)

Place .....

Date .....

To

(The Licensing Authority)

Sir,

I/We ..... residing at ..... taluk ..... district ..... request that I/we may be granted a licence (or my/our licence No ..... dated ..... may be renewed) for carrying on business in tobacco as a retail dealer.

2. My/Our turnover of retail sales of manufactured tobacco in the year ending 31st March..... according to the books of account maintained by me/us or as far as I/we can remember to the best of my/our knowledge in the absence of accounts was Rs. .....

*Or*

My/Our anticipated turnover of retail sales of manufactured tobacco for the first twelve months of business is Rs. .....

3. The location of my/our shop is described below:—

(I am a hawker vending tobacco in retail within the area specified below: .....).

4. I/We agree to abide by the terms and conditions of the licence which may be granted to me/us and to execute a counterpart agreement as may be required of me/us.

5. I/We have paid into the Government treasury at ..... or to the bill collector, Commercial Tax Department at ..... or to the village headman of ....., a sum of rupees $\frac{\text{three}}{\text{six}}$ only being the tax for the half-year ending $\frac{\text{30th September}}{\text{31st March}}$ ..... and enclose the receipt in proof of such payment.

Signature of the applicant.

*Declaration.*

I/We declare that to the best of my/our knowledge and belief, the information furnished above is true and complete.

Signature of the applicant.

NOTE.—In the case of new business, give the anticipated turnover for the first twelve months of business."

(12) In Form B-3, for paragraph 2 and the "NOTE" thereunder, the following paragraph shall be substituted, namely:—

"2. The privilege conferred by this licence entitles the licensee to manufacture tobacco, to buy the tobacco required for his manufacture and to sell wholesale tobacco manufactured by him."

(13) In Form B-4—

(i) in the heading the words "or commission agent" shall be omitted, and

(ii) in paragraph 1 for the expression "$\frac{\text{broker}}{\text{commission agent}}$" the expression "broker" shall be substituted.

(14) After Form B-4, the following Form shall be inserted, namely:—

"FORM B-4-A.

*Licence to carry on business as commission agent in tobacco.*

(*See* Rule 6.)

Licence No. ..... dated .....

..... having paid a fee of Re ..... (Rupees ..... only) is hereby authorized to carry on business as a commission agent in tobacco for the year ending 31st March ..... at ..... (place of business, if any) subject to the provisions of the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and the Madras Tobacco (Taxation of Sales and Licensing) Rules, 1939, as amended from time to time.

2. The privilege conferred by this licence entitles the licensee not only to negotiate and make contracts for the sale or purchase of tobacco for others but also to stock tobacco belonging to others for such sale or to obtain possession of tobacco thus bought. It shall not, however, entitle the licensee to buy or sell tobacco for himself for the purpose of trade or manufacture.

3. The licensee shall carry this licence on his person and shall produce it for inspection on demand by any officer of the Commercial Tax Department not lower in rank than an Assistant Commercial Tax Officer or by any officer of the Revenue department not lower in rank than a Revenue Inspector or by any officer of the Excise or Police department not lower in rank than a Sub-Inspector.

4. No corrections in the licence will be valid unless ordered and attested by the licensing authority.

Place ..... Licensing Authority.

*Renewal of the licence.*

| Date of renewal. | Year for which renewed. | Signature of the licensing authority. |
|---|---|---|
| | | |

(15) In the heading of Form B-5 the following shall be added at the end, namely:—

"In cases where the estimated annual turnover exceeds Rs. 400."

(16) After Form B-5, the following Form shall be inserted, namely:—

"FORM B-5-A.

*Licence to carry on business as a retail dealer in tobacco in cases where the estimated annual turnover does not exceed Rs. 400.*

(See Rule 8.)

(Issued free.)

Licence No. ..... dated .....

..... is hereby authorised to carry on business as a retail dealer in tobacco $\frac{\text{in his shop at}}{\text{by hawking}}$ for the half-year ending ..... subject to the provisions of the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and the Madras Tobacco (Taxation of Sales and Licensing) Rules, 1939, as amended from time to time.

No corrections in the licence will be valid unless ordered and attested by the licensing authority.

Place ..... Licensing Authority."

B. G. HOLDSWORTH,
*Secretary to Government.*

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# THE FORT ST. GEORGE GAZETTE

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 11 MADRAS, FRIDAY, MARCH 15, 1940

## PART IV-A—BILLS

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Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Bill, 1940 .. .. 1

The following Bill, together with the Statement of Objects and Reasons, is published for the purpose of eliciting opinion. Notice is hereby given that the said Bill will be considered on or after the 26th March 1940 and that any objection or suggestion which may be received with respect thereto before the said date by the Secretary to the Government of Madras in the Revenue Department, will be considered.

*A Bill to amend the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, for certain purposes.*

Madras Act VIII of 1939.

WHEREAS it is expedient to amend the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, for the purposes hereinafter appearing;

26 Geo. 5, Ch. 2.

AND WHEREAS the Governor of Madras has, by a proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

NOW, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title and commencement

1. (1) This Act may be called the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940.

(2) It shall come into force on the 1st day of April 1940.

Amendment of section 2, Madras Act VIII of 1939.

2. In section 2 of the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939 (hereinafter referred to as the said Act)— Madras Act VIII of 1939.

(i) for clause (1), the following clause shall be substituted, namely:—

"(1) "broker" means any person who in the ordinary course of his business negotiates and makes contracts on behalf of others for the sale or purchase of tobacco but neither stocks tobacco for delivery on such sale nor takes possession of tobacco on such purchase;"; and

(ii) after clause (2), the following clause shall be inserted, namely:—

"(2-A) "commission agent" means any person who in the ordinary course of his business negotiates and makes contracts on behalf of others for the sale or purchase of tobacco and also stocks tobacco for delivery on such sale or takes possession of tobacco on such purchase;"

Amendment of section 3, Madras Act VIII of 1939.

3. In section 3 of the said Act—

(i) in sub-section (1), after Explanation II, the following Explanation shall be inserted, namely:—

"*Explanation III.*—Where manufactured tobacco in any form whether packed in receptacles or not, is found in the shop of a retail dealer, it shall be presumed until the contrary is proved that such tobacco is exposed for sale.", and

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1-A) A licensed manufacturer shall not be required to obtain a separate licence as

a wholesale dealer either for the purpose of purchasing tobacco required for his manufacture or for the purpose of selling wholesale tobacco manufactured by him."

4. In sub-section (1) of section 5 of the said Act— Amendment of section 5, Madras Act VIII of 1939.

(*a*) for item (i), the following item shall be substituted, namely;—

| | Fee. |
|---|---|
| "(i) Any wholesale dealer who sells or buys tobacco leaf cured or uncured or any preparation or mixture of tobacco (not being manufactured tobacco) for trade therein— | |
| (*a*) If his turnover is estimated at less than one thousand rupees per annum. | Five rupees. |
| (*b*) If his turnover is estimated at one thousand rupees or above, but at less than three thousand rupees per annum. | Ten rupees. |
| (*c*) If his turnover is estimated at three thousand rupees or above, but at less than six thousand rupees per annum. | Twenty-five rupees. |
| (*d*) If his turnover is estimated at six thousand rupees or above, but at less than ten thousand rupees per annum. | Fifty rupees. |
| (*e*) If his turnover is estimated at ten thousand rupees or above, but at less than fifteen thousand rupees per annum. | Seventy-five rupees. |
| (*f*) If his turnover is estimated at fifteen thousand rupees or above per annum. | One hundred rupees."; |

(*b*) in item (iv), the words "broker or" shall be omitted;

(*c*) after item (iv), the following item shall be inserted, namely:—

"(v) A broker . . . Ten rupees."; and

(*d*) in the proviso, the figure and brackets "(i)" shall be omitted.

## STATEMENT OF OBJECTS AND REASONS

The Madras Tobacco (Taxation of Sales and Licensing) Act, 1939 (Madras Act VIII of 1939), came into force on the 1st August 1939. Experience of its working has revealed the necessity for certain alterations in the Act.

Under the Act as it stands, a licensed manufacturer is required to take out a separate licence as a wholesale dealer in unmanufactured tobacco for the purpose of purchasing the tobacco necessary for his manufacture. It is considered reasonable that a manufacturer's licence should cover all operations incidental to the manufacture, namely, the purchase of raw tobacco for manufacture and the wholesale disposal of the manufactured articles.

Under section 5 (1), the annual fee for a wholesale dealer's licence for selling or buying tobacco leaf or any preparation or mixture of tobacco (not being manufactured tobacco) is Rs 5 if his estimated turnover is below one thousand rupees per annum and Rs. 10 if his estimated turnover is between

one thousand and three thousand rupees. If his estimated turnover exceeds three thousand rupees a year the licence fee payable is Rs. 100. It is considered that this is too steep a scale and that additional stages should be provided between Rs 10 and Rs. 100.

Under the existing Act no distinction is made between a 'broker' and a 'commission agent' and the same licence fee is levied on both. It is considered desirable to distinguish between a broker and a commission agent. It is proposed to define a broker as a person who merely brings tobacco buyers and sellers together without himself keeping any stock of tobacco in the course of his business. A commission agent is proposed to be defined as a person who in addition to negotiating sales or purchases on behalf of others also stocks tobacco for delivery in pursuance of sales effected through him or takes possession of tobacco purchased for his clients. It is also proposed to reduce the fee for a broker's licence to Rs. 10.

Under the proviso to section 5 (1), a person paying a turnover tax as a wholesale dealer in manufactured tobacco may get a licence as a wholesale dealer in unmanufactured tobacco on payment of Rs 10 instead of Rs. 100. This enables certain wholesale dealers doing extensive business in unmanufactured tobacco to get the necessary licence for a tenth of the ordinary licence fee by starting a small manufacturing business and paying a trifling amount as turnover tax. It is necessary to prevent such evasions by omitting from the proviso the reference to item (i) of section 5 (1) which relates to wholesale dealers in unmanufactured tobacco.

It has come to notice that certain shop-keepers sell manufactured tobacco without a licence. They keep in their shops such tobacco in quantities which are within the limits of private possession allowed under the Act. It is difficult in practice to prove actual sales of tobacco by these unlicensed shop-keepers. The mere fact that manufactured tobacco was found in the shops will not under the law as it stands raise the presumption that the tobacco is kept for sale. To prevent evasions of the provisions of the Act, it is proposed to add an explanation to section 3 (1) to the effect that where manufactured tobacco in any form is found in a retail shop it should be presumed unless the shop-keeper proves to the contrary that the tobacco kept there is exposed for sale.

The object of the Bill is to give effect to the above proposals.

(By order of His Excellency the Governor)

P. APPU NAIR,
*Secretary to Government, Legal Department*

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